



Non-accountability as post-colonial harm: rethinking the responsibilities of arms producers

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Received: 15 March 2024 / Revised: 12 December 2024 / Accepted: 13 December 2024 / Published online: 16 January 2025
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Abstract Despite the inherent dangers of arms production, the responsibility of arms companies to prevent adverse human rights impacts in their business is too often surrounded by silence. What is more, the responsibilities of arms companies are rarely subject to critical historical interrogation, with contemporary arms trade literature paying primary attention to singular export control decisions from a lens of methodological nationalism. This forum contribution brings a post-colonial analysis to the (lack of) political and legal responsibilities demanded of arms companies over time by zooming in on apartheid and post-apartheid South Africa. Grounding in the discursive and material struggles between South African civil society actors and European arms manufacturers/states over the terms of responsibility, we suggest that limited notions of historical responsibility are themselves productive of non-accountability and contemporary harms. The article advocates for a broader understanding of responsibility in the arms sector, and calls for more critical attention and research to be directed towards the historical and transnational situatedness of arms companies and their home states. Such a focus must include recognition of the ways that the denial of reparations serves to (re)produce harm.

Keywords Arms · Companies · Post-colonial · Responsibility · South Africa

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Verantwortungsverweigerung als postkolonialer Schaden: Die Verantwortung der Waffenhersteller überdenken

Zusammenfassung Trotz der Gefahren, die mit der Waffenproduktion verbunden sind, wird die Verantwortung der Rüstungsunternehmen, negative Auswirkungen auf die Menschenrechte im Rahmen ihrer Geschäftstätigkeit zu vermeiden, allzu oft mit Schweigen übergangen. Darüber hinaus werden die Verantwortung von Rüstungsunternehmen nur selten einer kritischen historischen Untersuchung unterzogen, wobei die zeitgenössische Literatur zum Waffenhandel das Augenmerk vor allem auf einzelne Exportkontrollentscheidungen unter dem Blickwinkel des methodologischen Nationalismus richtet. Dieser Forumsbeitrag liefert eine postkoloniale Analyse der (fehlenden) politischen und rechtlichen Verantwortung, die von Rüstungsunternehmen im Laufe der Zeit gefordert wurde, indem er Südafrika während und nach der Apartheid näher betrachtet. Ausgehend von den diskursiven und materiellen Kämpfen zwischen südafrikanischen zivilgesellschaftlichen Akteuren und europäischen Waffenherstellern bzw. Staaten über die Bedingungen der Verantwortung wird aufgezeigt, dass begrenzte Vorstellungen von historischer Verantwortung selbst zu Verantwortungsverweigerung und Schaden in der Gegenwart führen. Der Artikel plädiert für ein breiteres Verständnis von Verantwortung im Rüstungssektor und fordert, der historischen und transnationalen Verortung von Rüstungsunternehmen und ihren Heimatstaaten mehr kritische Aufmerksamkeit und Forschung zu widmen. Dazu gehört auch die Erkenntnis, dass die Verweigerung von Wiedergutmachung der (Re)Produktion von Schaden dient.

Schlüsselwörter Waffen · Unternehmen · Postkolonial · Verantwortung · Südafrika

1 Introduction

The 1977 mandatory arms embargo against South Africa was the first time that the United Nations Security Council imposed sanctions against a UN member state.¹ Despite the unprecedented nature of this international decision, arms companies and their home states continued to find ways to do business with the apartheid regime. While the country eventually transitioned away from white minority rule, many of the same (inter)national corporate and government actors remained. They used their position and influence in the post-apartheid era to manufacture a 1999 arms deal beset by charges of massive corruption. Today, thirty years after the country's transition to democracy, South Africans are still living with the unjust legacies and continuities of powerful companies, foreign states and local politicians who have never been held accountable.

Frustrated by this complete lack of accountability, members of South African civil society organized a People's Tribunal on Economic Crime in early 2018, with the first hearings focusing on "corruption and economic crimes related to the arms trade over the past 40 years" (Open Secrets 2018). Having heard extensive evidence

¹ For all arms embargoes see <https://www.sipri.org/databases/embargoes>.

over five days, the prestigious panel of dedicated human rights and anti-apartheid activists concluded “there is no doubt” that those who violated the UN arms embargo, including those who did not explicitly intend to support apartheid, were “substantially guilty of [the] crime against humanity” that apartheid constitutes (People’s Tribunal 2018, p. 3). Moreover, they acknowledged that the 1999 arms deal and its attendant corruption might not have been possible without the “grossly negligent or deliberate approach” that facilitated violations of UN sanctions during the apartheid era (People’s Tribunal 2018, pp. 5–6).

If we take this seriously, there is an urgent need to reconsider how we understand corporate (and state) responsibility for their complicity in the production of violence and inequality. In fact, arms corporations have remained largely immune from investigation and prosecution, sheltered by their home states in the name of national security (Feinstein et al. 2011). More recent initiatives have sought to hold arms manufacturers and their home states accountable for aiding and abetting human rights violations in the present (see e.g., ECCHR 2022), yet the South African case evidences the myriad ways in which non-accountability and secrecy in the arms sector not only continue, but also serve to perpetuate economic injustices and corrupt democratic institutions into the future.

The following Forum contribution draws on ongoing research on several European arms manufacturers operating in South Africa during the apartheid and democratic eras² to argue that limited notions of historical responsibility themselves lead to non-accountability and contemporary harm. Complementing the significant historical and contemporary research on the arms trade³, our contribution sheds light on the (lack of) political and legal responsibilities demanded of arms companies, bringing a more critical post-colonial approach to the historical analysis as well as to the policy-centrism of contemporary scholarship. Drawing on the United Nations General Principles on Business and Human Rights (UNGPs), we understand the prevailing notion of corporate responsibility in the arms sector to be such that the state sets the regulatory context, within which companies are then free to act, provided they do no harm (see e.g., Karp 2023). While there are broader debates about arms manufacturers producing harmful products, we focus here on the narrower responsibility framework of “do no harm.” Such a framework requires companies to prevent adverse impacts on human rights, which include resulting accountabilities.

The article begins by pointing out some of the limitations of existing responsibility regimes for the arms sector, and then explores how these meanings of responsibility diverge from those articulated by South African civil society actors. Grounding our case in moments of (post-)colonial and (post-)apartheid struggle, we argue for a rethinking of corporate (and state) responsibility in the arms industry that is more closely linked to: 1) historical and transnational circumstances; and 2) the impact of

² Whereas many European arms-producing countries, most prominently the UK, France, West Germany and Italy, were active in the sale and export of arms and military technology to the apartheid South African regime despite UN embargoes, our research focuses on British and German arms companies.

³ On the historical trade, see, e.g., Grant (2007); Chew (2012); Satia (2018). In the contemporary era, see, e.g., Krause (1992); Feinstein (2011); SIPRI Arms Transfer Database 2024.

non-repair on harm (re)production. We conclude with a reflection on the politics of responsibility in the current phase of European rearmament.

2 Existing responsibilities of arms manufacturers

The endeavor to regulate the arms trade is far from being a new undertaking (see e.g., Wisotzki and Kühn's 2021 special issue on arms control). However, while the end of the Cold War generated significant scholarly attention and policy initiatives aimed at regulating the arms trade, including the promotion of 'responsible' arms export norms (Erickson 2015), the responsibilities of arms *manufacturers* remain too often overlooked.

In the domestic context, as facilitators of sovereign (militarized) power, arms companies are often accorded a privileged status by states that absolves them of responsibility for the use of their products (Byrne 2007). While export control regulations require compliance with the provisions of the international Arms Trade Treaty (ATT), the EU Common Position and national laws, state oversight and final approval of licenses allows arms manufacturers to hide behind state authorization when they face responsibility claims (Schliemann and Bryk 2019). Assertions of national security shroud arms deals in secrecy, making the arms trade one of the least accountable areas of public or private activity (Feinstein 2011).

In international law, however, the concept of responsibility has evolved rapidly in recent decades, and the accountability of individuals has advanced in the field of international criminal law. While corporate criminal accountability has virtually not developed at the international level (Crawford 2010), there is a notable trend, especially in Europe, to hold (arms) companies and their executives criminally accountable for international crimes within national jurisdictions (see e.g., ECCHR 2022).

In the corporate realm, arms producers encounter the UNGPs and corporate social responsibility (CSR) as a global policy norm (e.g., Dashwood 2020). Here, many arms producers seek to project an image of being simply another brand or 'just a business', despite the nature of their products (Jackson 2016), and even present themselves as socially responsible. However, they do so through what Stavrianakis calls "managed information through the guise of transparency" (2020, p. 233). This projection of normalcy, openness and CSR (e.g., in the form of non-discrimination in the workplace or environmental stewardship) serves to distract and thereby invisibilize the violence that emanates from their products (Jester 2023; cf. for other sectors Hönke 2014). While the EU Corporate Sustainability Due Diligence Directive (CS-DDD) and the UNGPs have pushed more progressively towards human rights due diligence (HRDD) measures, the CSDDD provides for significant exemptions for arms manufacturers on the premise that they are already subject to government export controls (Amnesty International 2024). HRDD within the UNGPs continues to be based on a negative duty not to harm, which in a neoliberal world order only serves to make certain forms of harm visible (Karp 2023). Such framing ignores more fundamental questions about the constitutive contributions of arms companies

and their home states to processes of militarization, inequality and the postcolonial continuities of producing harm.

3 Towards a broader understanding of responsibility

What emerges from the current set of regimes is a version of corporate (and state) responsibility that is highly ahistorical, individualistic and shielded by national governments and corporations alike through ever-shifting claims of exemptions and of being 'just a business'. This has led to a lack of accountability based on a fleeting and limited notion of responsibility that has helped to conceal profound contradictions, such as those embedded in post-apartheid deal-making with South Africa. Some of the same European economic actors and government entities that had supported the white supremacist regime were then colluding with Black officials in the new democratic government to enter into arms deals that were tainted with charges of immense corruption.

One prominent example refers to the 1984 sanctions-busting deal known as Project Tamboeryn. It was a covert initiative involving two West German companies, the state-owned Howaldtswerke-Deutsche Werft (HDW) and Ingenieurkontor Lübeck (IKL). The project involved the delivery of submarine blueprints to the apartheid regime, years after the mandatory arms embargo had been imposed. The Bonn government later claimed that it had never given formal approval to the deal, but South African archives reveal the telling minutes of a meeting between West German Chancellor Helmut Kohl and South African Prime Minister PW Botha on June 5, 1984. After Botha stressed the great importance of the submarine deal for relations between the two countries, Kohl privately assured Botha that "he would take care of the matter personally" (van Vuuren 2017). Ten days later, the contract between HDW/IKL and South African shipbuilders was signed. Despite their minimal punishment for their blatant violations of the law, a decade later the same companies found themselves bidding for submarine contracts with the new democratic administration. Together with Ferrostaal, the three companies formed a German consortium that won the contract to supply three submarines to the South African Navy in 1999. Internal compliance reports and investigations against Ferrostaal (then MAN Ferrostaal) and ThyssenKrupp (then parent company of HDW/IKL, and also involved as lead partner in securing four corvettes in the 1999 arms deal) point to significant corruption in securing the arms deals, which had little or no legal consequences for the companies (Open Secrets 2018; Feinstein et al. 2011). Perhaps most conspicuous, the consultant hired by Ferrostaal to help secure the post-apartheid deal, Jeremy Mathers, had previously served as the South African project manager for Project Tamboeryn (Open Secrets 2018).

The People's Tribunal and its civil society organizers shed light on these continuities of economic and political injustice enabled by the patronage networks that link the same European arms companies and states in *both* apartheid and democratic era South Africa. While these corporations (and states) use secrecy, compliance with (domestic) law and economic rationales to dismiss their responsibilities as a thing of the past, South African civil society continues to demand accountability for the

industry's cumulative impacts into the present (for competing periodizations, see Schwarz et al. 2025). Drawing on these discursive and material struggles over the terms of responsibility, in which contestation plays a central role in processes of 'transition' (Sändig and Kühn 2025), we advocate for (re)new(ed) critical attention and research on the post-apartheid, and indeed post-colonial, responsibilities of arms companies, with a particular focus on: 1) the historical and transnational situatedness of arms companies (and their home states); and 2) the impact of the lack of access to reparations on the (re)production of harm.

3.1 Responsibility as historically and transnationally situated

For an industry whose commodities are inherently purposed for destruction and whose business spans time and the globe, harm knows no borders. First, as a former British colony, South Africa was not entirely separate from the British state. In fact, European states constituted themselves as imperial polities whose 'national' wealth and identity historically rested in no small part on the forced labor and resource extraction of (racialized) Others (Bhambra 2021). Given the power derived from such imperial-colonial relationships, in which arms production was constitutive of European industrial development (Satia 2018), the overwhelming dominance of companies from the United States, Europe and Russia (and China) in today's arms production market is anything but surprising. Moving beyond the 'methodological nationalism' (Stavrianakis and Selby 2013) and episodic attention to export control decisions so prevalent in contemporary arms trade literature, arms companies are again subsumed into this history of transnational power hierarchies.

Second, and more specifically, there are past harms (i.e., breaches of the mandatory arms embargo or adverse impacts on human rights) committed by European arms companies in South Africa that have never been redressed. This raises a broader question: Who takes responsibility for remedying past wrongdoings, which continue to structure profound racialized inequalities that exist within the global political economy. In the arms industry, the names change as companies are nationalized or merged over time, but the history and its excessive North-South asymmetries remain. Companies such as HDW/IKL in (West) Germany or Plessey in the UK, which on numerous occasions have clearly violated the mandatory arms embargo—with the explicit or tacit approval from West German and British governments⁴ (see e.g., Open Secrets 2018)—have never been held accountable. Like much of the UK arms industry, the majority of Plessey's defense assets eventually became part of BAE Systems, now the sixth largest arms producer in the world and the largest in Europe, while HDW/IKL became a subsidiary of ThyssenKrupp, which is now also one of the 100 largest arms companies in the world. If BAE and ThyssenKrupp take over the capabilities of Plessey and HDW/IKL respectively, are they not also taking on their responsibilities? We call for greater consideration to be given to researching and establishing reparation mechanisms that are attuned to such colonial-imperial continuities, with corporate sanctioning and restitution in (inter-)national

⁴ Publication of 'How Britain Arms Apartheid', Jul. 1985, Oxford, Bodleian Libraries, Archive of the Anti-Apartheid Movement, MSS. AAM 1539.

jurisdictions linked not to home state governments but to the victims in the countries concerned.

3.2 Redress and reparations as constitutive of responsibility

Such a broadened understanding of responsibility is not only about the unredressed harms of the colonial-apartheid past, but also about what colonial-apartheid relations and historical non-accountability make possible in the present.⁵ This is where remedy and reparation must start with harm repair by more directly targeting, for instance, those affected by breaches of the arms embargo. However, reparation cannot be limited to apartheid-era harms, as the patronage networks that capacitated the apartheid regime did not cease to exist with the end of apartheid, as the South African case shows. They continue to perpetuate harm in the democratic era. Instead, a meaningful reparation mechanism must take into account both the immediate harm at a particular historical moment *and* the present living conditions of people that have been structured in large part by non-accountability in the past.

Under the current international legal system, there are immediate redress mechanisms available through (national) courts to sanction corporate and state actors for their present contributions to harm. However, these remedial measures are, by and large, not linked to the victims concerned and therefore cannot be considered reparations. The recent EU debate on the CSDDD suggested the potential to include product *use* as part of arms manufacturers' due diligence obligations (see e.g., Castellanos-Jankiewicz and Schneider 2023), but the final agreement excluded arms companies from this part of the legislation, closing another door on remedial possibilities.

While the inaccessibility of meaningful avenues to reparation is not an omission exclusive to the global arms sector, the claim to national security and foreign policy exceptionalism (along with corresponding economic interests and corporate secrecy) keeps most of the details out of the public eye. It is high time to lift the exceptionalism on the arms business by bringing into public scrutiny far more transparency about the sales made, the timing of deliveries and the end use of arms, as well as the payments to and identity of agents and middlemen. Greater public awareness will make future reparations a more realistic possibility.

While the need for a reparation mechanism that responds to immediate harms is paramount, the decades of action by South African civil society groups also draws our attention to the productive legacies of past non-accountability. In the early years of post-apartheid democracy in South Africa, and with the encouragement of European arms companies and governments, South Africa spent excessively (US\$ 5 billion) on weapons, at a time when its President claimed that the country could not afford anti-retroviral medication for its 6 million people infected with HIV/AIDS (Feinstein 2011). Investigations into European arms companies suggest substantial use of bribes to secure the contracts. Such elite overspending by arms manufacturers

⁵ Nor does responsibility only encompass material harm, but also epistemic, relational and other forms of harm. For a unique take on decolonial memory activism as challenging the epistemological foundations of collective memory, see Pauls (2024).

reproduces economic and social inequalities that are evidenced in the ‘opportunity costs’ of the country’s disproportionate spending on arms (i.e., preventable deaths due to HIV/AIDS) as well as in the corrupting of democratic institutions. Since many of the same corporate (and state) actors or their successors were involved in both the sanctions-busting during the apartheid era and the suspected corruption in its immediate aftermath, remedying individual harms is insufficient without also recognizing how unremedied harms from the past have created the conditions for ongoing and new harms in the present.

Given the colonial legacies of a profoundly unequal international system and the concomitant shaping of international law, such possibilities for reparations may not be feasible within the limits of current legal constructs. Indeed, the emphasis on criminality in the development of international legal responsibility for non-state actors serves primarily to individualize the terms of responsibility while normalizing the excesses of the arms production and transfer system. There is a risk that individuals and companies will be separated from the structures and from other actors, especially states, that make possible their contributions to violence. In most cases, the attribution of responsibility cannot be exclusively individualistic and requires an independent monitoring mechanism, including at the international level, such as the ATT, with more robust and enforceable provisions. While this may have become more difficult in the context of current transformations of the world order, civil society organizations continue to push for concrete changes in the law.⁶ Alongside their struggles, critically oriented research can help to demonstrate how narrow frameworks of responsibility not only lead to limited opportunities for redress, but also to an environment that fosters subsequent harm.

4 Conclusion

The case of South Africa highlights the critical importance of rethinking the responsibilities of arms producers, at the very least by making sales more transparent to the accountable public. It also illustrates the great potential that including product *use* in the arms manufacturers’ due diligence obligations has in order to prevent arms deals that violate international laws and norms. As current public opinion in Europe shifts dramatically towards a more pro-armament stance following the Russian invasion of Ukraine (and the subsequent US withdrawal), it is particularly important that we not forget the lessons of South Africa, namely that a system that promotes sales while demanding minimum transparency and accountability not only strengthens repressive regimes, but also perpetuates economic and political injustices and corrupts democratic institutions in both recipient and supplier countries. A critical look at the limited responsibility-taking by European arms producers operating in (post-)apartheid South Africa cautions against significant military buildup without careful consideration of (unintended) longer-term harms.

⁶ And strategically appealing to ‘universal’ norms such as human rights due diligence may enhance the potential for transnational collaboration, see Zöhrer et al. (2025).

Acknowledgements Research for this Forum article was supported by the German Federal Ministry of Education and Research (BMBF) in the project “Bayerisches Zentrum für Friedens- und Konfliktforschung: Deutungskämpfe im Übergang” [grant number 01UG2204A-D], see also www.conflicts-meanings-transitions.de. We thank the editors and two anonymous reviewers for their very helpful comments on earlier versions of the paper.

Funding Open Access funding enabled and organized by Projekt DEAL.

Conflict of interest B.J. McEvoy and J. Hönke declare that they have no competing interests.

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